

Legal Principles, Investigation Tools, and Audit Techniques

Many people do not have a clear understanding of what state tax nexus is. This course is designed to be “a beacon to understanding nexus” for state government employees.

Objective: To provide participants with a detailed understanding of the constitutional principles and limitations for establishing nexus for corporate business taxes and sales/use taxes. Participants will also learn current investigative approaches and audit techniques, including the types of information used to prove nexus.

Audience: The program is designed as a basic course for state revenue department auditors and attorneys who have had limited exposure to nexus issues, but are not experts in the area.

Prerequisites: None

Program Level: Beginning

Program Content: Constitutional principles of nexus for state taxation; statutory principles of nexus for income and franchise taxes; nexus investigations and audits.

Course Materials: Participants will receive a comprehensive course binder and a bound casebook with the most important nexus cases. Upon registration participants will also receive information on how to access nexus information located on the Multistate Tax Commission’s website.

Advance Preparation: None

Instructional Delivery Method: Lecture with case illustration and case study by small groups

Recommended CPE credit: 16 hours

Registration Information: Contact Antonio Soto at asoto@mtc.gov or 202-508-3846

Program: Day One 8:00 am – 5:00 pm

Breakfast and lunch will be provided, with breakfast starting at 7:00 am

I. Constitutional Principles of Nexus for Sales and Use Taxation

An overview of the constitutional standards for sales and use tax nexus and review of court interpretations of those standards. Topics will include issues such as what constitutes in-state property, affiliate nexus, representational nexus, in-state deliveries, temporary presence, *de minimis* presence, trade show attendance, and duration of nexus.

Case Illustration

Participants will be given case studies to review for sales and use tax nexus issues. Group discussion will follow.

II. Scope of Protected Activities Under P.L. 86-272

Review of history leading to the enactment of Public Law 86-272. Discussion of protected and unprotected activities as interpreted by court cases that apply this federal law. Multistate Tax Commission Uniform Guidelines and throwback rules will also be examined.

III. Constitutional Principles of Nexus for Income and Franchise Taxation

A discussion of the constitutional limitations on establishment of nexus for taxes and activities that fall outside the protection of P.L. 86-272. Will review theories of economic presence, nexus through intangibles, nexus created by financial services, and the emerging nexus issues applicable to electronic commerce. Review of court and administrative interpretations, and applications of those standards.

Case Illustration

Participants will be given case studies to review for income and franchise tax nexus issues under P.L. 86-272 and constitutional limitations. Group discussion will follow.

Program: Day Two 8:00 am – 4:30 pm

Breakfast and lunch will be provided, with breakfast starting at 7:00 am

IV. Identifying Potential Non-filers

Focus is on identifying and locating potential non-filers in your state. Speakers will discuss sources of leads; use of internal cross-references; examination of marketing materials, phone books, trade magazines, and how to develop leads into potential audits. Instructors will discuss conducting research via state databases, on-line services, and the Internet.

V. Nexus Investigations and Audits

This session will focus on conducting a nexus audit or nexus investigation. What the auditor should do in advance to prepare for the audit; what questions the auditor should ask at the initial interview; how to ask for the information; what documents every auditor should look at; what the auditor should look for once he or she has the documents; how auditors prepare competent audit findings. There will also be a discussion of how to enforce out-of-state audit requests through the subpoena process.

VI. Case Study

Program participants will be divided into small groups and asked to conduct a nexus audit of a hypothetical company. Participants will be given a written description of the company's structure and activities, and then allowed to request appropriate information from the company's tax manager. The groups will then analyze the nexus consequences of the information received. The class will review and discuss each group's results.